

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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PUBLIC RECORD MEDIA, LLC,

Plaintiff,

v.

**ORDER**

Civil File No. 12-1225 (MJD/AJB)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

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Jonathan T. Haines, Counsel for Plaintiff.

Amy E. Powell and Judson O. Littleton, U.S. Department of Justice, and Bahram Samie, Assistant United States Attorney, Counsel for Defendant.

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The above-entitled matter comes before the Court on Defendant's letter request for permission to file a motion for reconsideration. [Docket No. 41] Defendant requests permission to file a formal motion for reconsideration or, in the alternative, requests that the Court treat its letter as a formal motion for reconsideration and motion to alter or amend the judgment. Plaintiff has filed a letter opposing Defendant's letter. [Docket No. 42] The Court grants Defendant's request to deem its letter as a formal motion for reconsideration.

On January 29, 2103, Chief United States Magistrate Judge Arthur J. Boylan issued an Order awarding Plaintiff \$7,500 in attorney's fees and \$350 in costs. [Docket No. 29] Defendant filed an objection to that January 29 Order. [Docket No. 33] On May 7, 2013, after additional briefing by both parties, this Court issued an Order affirming the January 29 Order based on its conclusion that the January 29 Order was neither clearly erroneous nor contrary to law. [Docket No. 40]

Defendant now asserts that a post-judgment order awarding attorney's fees is dispositive of a claim for fees and, therefore, requires de novo review. See, e.g., McCombs v. Meijer, Inc., 395 F.3d 346, 360 (6th Cir. 2005); Estate of Conners by Meredith v. O'Connor, 6 F.3d 656, 659 (9th Cir. 1993). Defendant concludes that this Court erred when it reviewed the Chief Magistrate Judge's Order under the nondispositive deferential standard, rather than the dispositive de novo standard, and that, under the de novo standard, the Court should reject the attorney's fee award.

The Court concludes that it would be appropriate to conduct a de novo review, treating the January 29 Order as a Report and Recommendation. The Court has now conducted a de novo review upon the record. 28 U.S.C. §

636(b)(1); Local Rule 72.2(b). Based upon that review, the Court concludes that the award of attorney's fees is warranted. As fully explained in the January 29 Report and Recommendation, Plaintiff substantially prevailed, and Plaintiff is entitled to fees because its lawsuit provided a valuable public benefit and it acted in the public interest rather than in a commercial interest. Moreover, with regard to the question of the reasonableness of Defendant's withholding of the requested documents, the Court finds that this factor does not alter its analysis of Plaintiff's entitlement to an award of attorney's fees. As the Report and Recommendation noted, no documents related to the third-category request existed, so none were actually withheld. Moreover, Defendant failed to show that it had a reasonable basis for not informing Plaintiff that no documents existed for the third category requested until after Plaintiff filed the current lawsuit. Thus, the Court adopts the Report and Recommendation of Chief United States Magistrate Judge Arthur J. Boylan dated January 29, 2013.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED:**

1. Defendant's letter request for permission to file a motion for reconsideration [Docket No. 41] shall be deemed a Motion for Reconsideration, and Defendant's Motion for Reconsideration [Docket No. 41] is **DENIED**.

2. The January 29, 2013 Order [Docket No. 29] shall be designated as a Report and Recommendation.
3. The Court **ADOPTS** the Report and Recommendation of Chief United States Magistrate Judge Arthur J. Boylan dated January 29, 2013 [Docket No. 29].
4. Plaintiff is granted an award of attorney's fees in the amount of \$7,500, plus its \$350 filing fee, for a total award of \$7,850.

Dated: June 7, 2013

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court